

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar, Town Attorney

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT CONTAINED IN THE ACKNOWLEDGMENT AND HOLD HARMLESS AGREEMENT THAT WAS REACHED AS A RESULT OF COURT ORDERED MEDIATION IN THE DECLARATORY JUDGMENT ACTION FILED BY CHRISTOPHER AND SUZAYN YAP AGAINST THE TOWN OF DAVIE.

REPORT IN BRIEF: The Acknowledgment and Hold Harmless Agreement was the result of Christopher and Suzayn Yap filing a declaratory judgment action in Circuit Court against the Town of Davie. This legal action was essentially asking the judge to declare the Yaps had either complied with all the requirements to receive a building permit, or declare what other requirements had to be met for them to be issued a building permit for their planned home on SW 29th Street between 137th Terrace, and 136th Avenue. One of the points of contention was the issue of requiring the Yaps to install infrastructure, specifically paving the stretch of SW 29th Street between 137th Terrace and 136th Avenue. Since the commencement of the suit, and with guidance from the Council, the Town has undertaken the process of modifying the Code to allow for the road to remain unpaved. In the interest of not causing the Yaps any further delays, and to resolve the legal action, this Acknowledgment and Hold Harmless Agreement, which allows the Yaps to pull their permits and begin construction of their home, while the Code amending process is going on, was drafted, and signed by the Yaps at a Court ordered mediation proceeding on November 20th, 2006 and now awaits the Council's approval.

PREVIOUS ACTIONS: None

CONCURRENCES: The Town Attorneys office drafted the provisions of the Acknowledgment and Hold Harmless Agreement based off of the input of the Town Council and Town staff. This office believes this agreement provides the legal protections asked for by the Council, while also providing a satisfactory resolution for the Yaps which will result in the dismissal of the legal action against the Town.

FISCAL IMPACT: Legal fees, costs, and potential damages, if awarded.

RECOMMENDATION(S): The attached Resolution is in proper legal form for the Town Council's approval. The Town Attorney's office recommends approval in order to resolve a law suit pending against the Town, based on a code provision that is in the process of being amended.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT CONTAINED IN THE ACKNOWLEDGMENT AND HOLD HARMLESS AGREEMENT THAT WAS REACHED AS A RESULT OF COURT ORDERED MEDIATION IN THE DECLARATORY JUDGMENT ACTION FILED BY CHRISTOPHER AND SUZAYN YAP AGAINST THE TOWN OF DAVIE.

WHEREAS, the Yaps are the owners of certain real property in the Town of Davie; and

WHEREAS, the Yaps have requested the Town of Davie issue a building permit for planned improvements for a single family home on the Property; and

WHEREAS, the current Town Code, which currently requires an applicant to first construct various infrastructure improvements to public and private rights-of-way (such as paving) is currently being amended; and

WHEREAS, the Town, during the Code amendment process does not want the Yaps delayed in their planned improvements for the Property, and

WHEREAS, the Town seeks to resolve the current legal action pending against it.

NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA;

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor to execute the settlement contained in the Acknowledgment and Hold Harmless Agreement that was reached as a result of Court Ordered Mediation in the Declaratory Judgment Action filed against the Town by Christopher and Suzayn Yap.

SECTION 2. This Agreement shall become effective upon the Town of Davie issuing a building permit for the property, and the pending lawsuit bearing the case number 06-12876(03) shall be presumptively dismissed.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2006

MAYOR/COUNCILMEMBER

ATTEST

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006.